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Minutes of the 110th meeting of the Board of the EHRC

30 March 2023 (13:00 to 17:50)

Virtual

Attending

Commissioners

Baroness Kishwer Falkner (Chairwoman), Eryl Besse (Deputy Chair), Alasdair Henderson (Deputy Chair), Arif Ahmed, Jess Butcher, Joanne Cash, David Goodhart, Kunle Olulode, Akua Reindorf, Su-Mei Thompson (items 1 to 4, 9 to 15), Dr Lesley Sawers

Officers

Marcial Boo, Chief Executive Officer and Commissioner ex officio
Moya Alcock, Director, Communications (item 11 and 13)
Joe Corcos, Director, People and Infrastructure (item 9)
Cath Denholm, Chief Operating Officer
Melanie Field, Chief Strategy and Policy Officer
Jacqueline Killeen, Chief Regulator
Ruth Latusek, Senior Associate, Governance Lead
Beverley Reid, Senior Principal, Head of Business Improvement (item 10)
Britta Rinaldi, Chief of Staff
Sarah Whelan, Principal, Corporate Governance

Guests

Helen Anderson, Government Equality Hub (items 2 to 9)

1. Chairwoman's welcome and apologies

- 1.1 The Chairwoman welcomed attendees to the meeting and advised that the agenda had been slightly reordered to ensure maximum attendance for key decisions. There were no apologies.

2. Declarations of interest

- 2.1 The Chairwoman invited new declarations of interest and existing interests in relation to this meeting. The following interests were noted:
- a) Akua Reindorf advised that her interests were the same as previously provided, and that she is also acting against the Conservative party on a case on Islamophobia.
 - b) Joanne Cash noted that an article was published in The Guardian on 09 February regarding her support for Kemi Badenoch's MP leadership campaign and that she was a Conservative party candidate over 10 years ago.
 - c) The Chairwoman reminded Commissioners of her existing interest regarding a family member's employment.
- 2.2 Under the CEO report, the following potential conflicts of interest regarding the Higher Education (Freedom of Speech) Bill were declared:
- a) Akua Reindorf conducts barrister work on this Bill and she has spoken at the Office for Students.
 - b) Arif Ahmed has given evidence to Parliament on the Bill, has been involved in freedom of speech at universities and has a press connection.
- 2.3 Helen Anderson recused herself for the items on Writing to the UK Government on the Equality Act and the Framework Document 2023.

3. Minutes of the 109th Board meeting and 3 March extraordinary Board meeting (EHRC 110.01, 110.02)

- 3.1 The Board approved the minutes of the meeting of 18 January as an accurate record.
- 3.2 The Board approved the minutes of the extraordinary meeting of 3 March subject to minor amendments to paragraphs 4.4, 4.5 and 4.9.

4. Actions arising (EHRC 110.03)

- 4.1 The Board noted the action log, and the Chairwoman advised that she is content that everything is in hand and will be covered at this or future meetings and that the actions proposed for completion are complete.

5. Committee and Commissioner Working Group updates

- 5.1 The Chairwoman thanked Kunle Olulode for agreeing to chair the Board's Audit and Risk Assurance Committee (ARAC). Kunle thanked colleagues for their confidence in his taking up this significant role.
- 5.2 The Chief Operating Officer, on behalf of the previous Chair of ARAC, advised that ARAC met on 15 February, where they approved the internal audit plan for 2023/24. ARAC also had an extraordinary meeting on 2 March. The next meeting is on 26 April, which Kunle will chair. The Committee will discuss the draft strategic risk register 2023/24; the draft annual ARAC report to the Board; the annual policy compliance report and annual information governance report; the draft Annual Report and Accounts, and the business continuity review.
- 5.3 The Chair of the People and Workspaces Committee (P&WC) advised that the P&WC met on 2 February and discussed the staff survey results and corporate values. Members noted that the survey questions were largely the same as those used for the Civil Service survey, and that engagement at the Commission had improved whereas in the Civil Service it had declined. Members had discussed the need to focus on areas where we were still lower than we wished to see. The 14 June P&WC meeting would discuss the Commission's estates strategy, and Commissioners have been invited to attend.
- 5.4 The Chair of the Statutory Report Commissioner Working Group advised that the Working Group had met twice since the last Board meeting. The call for evidence that ran from January to March had a good response but of mixed quality, and there have been stakeholder roundtables on race, sex and disability in recent weeks.
- 5.5 The Scotland Commissioner advised that the Scotland Committee had a positive meeting on 28 March. The Committee endorsed the Business Plan and advised that it would drive our agenda forward in the Scottish context. The Committee agreed with recommendations to rename the Statutory Report and noted that we have permission from the Scottish Human Rights Commission to include human rights information in its publication. The Scotland Commissioner advised that letters of welcome will be sent to the new First Minister from the Chairwoman and to other relevant Ministers from the Scotland Commissioner. Scotland Committee recruitment will start in April subject to the Chairwoman's approval, and Commissioners were asked to forward details to their networks.

Action: Director of Policy, Human Rights and Three Nations to liaise with Private Office on sending letters to the new First Minister from the Chairwoman and other relevant Ministers from the Scotland Commissioner.

Action: Governance team to forward details of the Scotland Committee recruitment campaign to Commissioners once published in April.

- 5.6 The Wales Commissioner advised that the Wales Committee met on 16 March and provided advice on the Business Plan, which they welcomed. They endorsed the name change of the Statutory Report and were pleased to see key findings on disability and race. Members were content with the section on the Committee in the Annual Report and Accounts, subject to adding stakeholder engagement activities.

6. CEO Report and Chairwoman's update (EHRC 110.04)

- 6.1 The Board formally approved Kunle Olulode's appointment to chair the ARAC, effective 20 March 2023.
- 6.2 Helen Anderson from the Government Equalities Hub advised that Ministers were looking to replace Helen Mahy, following her resignation on 4 March, from the reserve list of the last round of Commissioner recruitment. Ministers were not expected to take long to arrive at a decision.
- 6.3 The Board noted the CEO report. They agreed that the introduction to the report should be amended as discussed.

Action: Private Office to amend the CEO report and liaise with the Governance team to republish on Admin Control.

- 6.4 Commissioners requested an update on the Bill of Rights Bill, advising that it will be significant, and that we should consider how it would impact in Scotland.
- 6.5 Commissioners advised that the Higher Education (Freedom of Speech) Bill is a good opportunity for proactive communications. Commissioners were advised that the Commission's guidance on freedom of expression in universities sets out our positions and will form the basis of our engagement on the new statutory guidance. One Commissioner advised that the guidance has been helpful, but it will need to be updated.
- 6.6 Commissioners advised that, when engaging stakeholders on the Conversion Practices Bill, we should engage all stakeholders affected by the Bill, including religious groups, parents groups and the Royal College of Psychiatrists, as well as LGBT groups.
- 6.7 Commissioners raised concerns about the letter from the Paymaster General on the Commission's budget for 2023-24 and 2024-25 which is not due to increase, even to take account of inflation. The Board noted that the Government in policy and legislative areas, continued to require the Commission to take on additional responsibilities including in Inclusive Britain,

the Workers Protection (Amendment of the Equality Act 2010) Bill and Online Safety Bill among others, all unfunded commitments. This may merit a letter to the Minister for Women and Equalities pointing out that delivery of these responsibilities would be impossible without additional funding. The Chairwoman reassured Commissioners that she will set this out in her reply. The Board noted that we have not received a reply to our letter of August 2022 to the then Minister for Women and Equalities asking that the Commission have the power to issue fines for non-compliance. Helen Anderson advised that she has briefed the Minister.

- 6.8 In response to one Commissioner's question, the Executive advised that ARAC discussed the cost and impact of the Commission's work at its 15 February meeting. Further work, including on key performance indicators, would return to ARAC and then to the Board in due course.
- 6.9 The Chairwoman updated Commissioners that, following her meeting with Lord Callanan on 16 March on the Strikes (Minimum Service Levels) Bill, the Government had written a comprehensive reply to our letter. She noted that, as the Bill is progressing quickly, the Commission decided not to produce a parliamentary briefing. The CEO noted that we have received three full responses from ministers to our questions on policy matters, which is a testament to the credibility and esteem in which we are held.

7. **People survey results (EHRC 110.06, 110.06a)**

- 7.1 The Chairwoman advised Commissioners that she and the P&WC Chair had agreed for Commissioners to have a voluntary meeting after Easter on the development of the corporate values.

Action: Director of People and Infrastructure, with support from the Governance team, to coordinate a voluntary Corporate Values teach-in for 13 April.

- 7.2 The Chairwoman noted that there had been a teach-in on 27 March on the methodology of the People survey, which she, Eryl Besse, Su-Mei Thompson, Kunle Olulode and Joanne Cash had attended.
- 7.3 The Board noted the improved results of the survey and the programme of activity already underway to improve staff engagement. Commissioners made the following comments and observations:
 - a) to consider concerns that the survey questions have not been verified by a psychometrician;
 - b) to carefully consider questions relating to the Board, as it had not been sighted on the questions asked, including in the light of Commissioners' part-time, non-executive roles, and that specific, practical actions should be proposed to address legitimate concerns and make improvements;
 - c) to consider how to improve the staff engagement index, which is relatively low at 53%; and

- d) that it is important to have communication channels for feedback from staff to the Board, including the current People survey, staff forum and Commissioner attendance at all-staff meetings.

- 7.4 The Board agreed that the survey questions should be revisited for 2023/24, taking into account academic research in this area, and to involve Commissioners in the questions about the Board.

Action: Director of People and Infrastructure to bring proposals to P&WC in September 2023 on the questions to be asked in the 2023/24 People survey regarding the Board; and to liaise with the P&WC Chair on involving Commissioners.

- 7.5 The Chairwoman proposed that a facilitated workshop for Commissioners and the Leadership team is organised after the Easter Break, to help them work together.

Action: Governance team, following advice from Procurement, to arrange a joint Commissioner and Leadership Team facilitated workshop after the Easter break.

- 7.6 The Chairwoman advised Commissioners that anti-bullying and harassment training will be offered to them and that it is mandatory. The Chairwoman will first look at the training materials with P&WC and its Chair.

Action: Director of People and Infrastructure to commission anti-bullying and harassment training materials, share the draft with the Chairwoman and P&WC for comment, and arrange the training.

8. Writing to the UK Government on the Equality Act 2010 (EHRC 110.05)

- 8.1 The Board considered the draft letter to the Minister for Women and Equalities, produced with the assistance of a sub-group of Commissioners with the agreement of the CEO. They responded to questions about policy implications and the law, and the Board expressed confidence that the requirements of the Public Sector Equality Duty had been met, and that risks had been fully considered.
- 8.2 Some amendments to the draft letter were suggested and the Board agreed to some of these. All Commissioners bar one were in favour of sending the letter, as amended, to the Minister.
- 8.3 Commissioners agreed to a proactive handling plan to be approved by the Chairwoman, CEO and subgroup of Commissioners. They agreed to send the revised letter to the Minister for Women and Equalities forthwith and for the Chairwoman to notify HM Opposition in advance of our public statement.

Action: Private Office to amend the letter as agreed and send to the Minister for Women and Equalities on behalf of the Chairwoman.

- 8.4 Commissioners agreed to support the Executive in communicating the Board's decisions internally and to support the Chairwoman in drafting an opinion piece to explain the Board's decisions to an external audience.

9. EHRC annual business plan and budget 2023-24 (EHRC 110.07, 110.07a)

- 9.1 The Board noted the budget 2023/24 position and advised, as previously discussed, that we should ask for more funding to resource Government's requests that we take on additional work.
- 9.2 The Board approved the short version of the corporate Business Plan 2023/24 subject to rewording 'supporting' in section 1A to clarify that we are informing the Bill rather than actively supporting, and to check the correct use of 'sex', 'gender' and 'trans' throughout the document.

Action: Head of Business Improvement to amend the short version of the corporate Business Plan 2023/24 as agreed.

- 9.3 The Board noted that a summary Business Plan will be produced for publication and that this will be presented to the Chairwoman to approve after this Board meeting.
- 9.4 The Chairwoman suggested that, if the Worker Protection Bill progresses to third reading, she would discuss the additional work and funding position with Baroness Burt of Solihull as the sponsor of the Bill. The CEO confirmed that this will be taken forward as required.

Action: Chief Strategy and Policy Officer to write a letter on behalf of the Chairwoman to ask Baroness Burt of Solihull to enquire about our resource constraints if the Worker Protection Bill progresses to third reading.

- 9.5 The Executive advised that the Government has indicated that it also expects the Commission to play a regulatory role in the field of Artificial Intelligence (AI). This aligns with our strategy to ensure that AI and AI algorithms are not discriminatory. Commissioners advised that AI may become a larger and more complex part of our agenda, and that it will need to be properly resourced.
- 9.6 The Chairwoman advised that the Board needs to be engaged on refreshing our guidance on freedom of speech in Higher Education settings following legislative changes from the Higher Education (Freedom of Speech) Bill, and that the Board needs to be sighted on advising the Government on the development of guidance for schools on trans pupils.

Action: Chief Strategy and Policy Officer to inform the Board when refreshing our guidance on freedom of speech in Higher Education settings following legislative changes from the Higher Education (Freedom of Speech) Bill.

Action: Chief Strategy and Policy Officer to inform the Board on the Government's development of transgender guidance for schools.

10. Statutory progress report: Title and high-level messages (EHRC 110.08)

- 10.1 The Board agreed to change the main title of the statutory report from 'Is Britain Fairer?' to 'The Equality and Human Rights Monitor', with subheadings to allow flexibility across the nations. Commissioners noted the progress update, the key findings from the report and that the full report will be presented to Board for clearance at its June 2023 meeting, after having been thoroughly reviewed by the Commissioner Working Group.

Action: Governance team to write to Commissioners for comments by correspondence on the Statutory Report paper by COP Thursday 6 April.

- 10.2 The Executive advised Commissioners that the Scotland and Wales Committees agreed with the proposed name change from 'Is Britain Fairer?' to 'The Equality and Human Rights Monitor', and they supported the subheadings of 'Is Scotland Fairer?' and 'Is Wales Fairer?' for the Scotland and Wales reports, respectively. The Executive noted that there may also be a subheading for the main report, which the Working Group will determine.

11. Communications and engagement update and priorities 2023/34 (EHRC 110.09, 110.09a, 110.09b, 110.09c)

- 11.1 The Board agreed to take the communications update paper as read, and to provide comments by correspondence.

Action: Governance team to contact Commissioners for comments by correspondence on the Communications and engagement update by COP Thursday 6 April.

12. Framework Document 2023 (EHRC 110.10)

- 12.1 The Board agreed to reschedule the Framework Document to the next Board meeting due to time constraints.

Action: Director of Finance, Governance and Planning to provide the Framework Document 2023 to the Board at the 16 May meeting.

13. **AOB (EHRC 110.11a, 110.11b, 110.11c, 110.11d, 110.11e, 110.11f, 110.11g, 110.11h)**
- 13.1 The Chairwoman advised Commissioners that the next Board meeting will be in Glasgow on 16 May, and that she and the Scotland Commissioner will discuss staff and stakeholder engagement, and that further details will be sent to Commissioners in due course.
- Action: Private Office to arrange a meeting for the Chairwoman and Scotland Commissioner to discuss the staff and stakeholder engagement around the 16 May Board meeting.**
- Action: Governance team to send details of the 16 May programme and logistics to Commissioners when finalised.**
- 13.2 The Chairwoman advised Commissioners that we may move the June and November Board meetings from online to in person and that we will look at the likely attendance of Commissioners and then review.
- Action: Governance team to provide the Chairwoman with Commissioners' availability for the June and November Board meetings to review whether to move the meetings to in person.**
- 13.3 The Chairwoman reminded Commissioners about the email they received in January 2023 regarding their agreement to abide by the Code of Conduct.
- 13.4 The Board noted the Forward Schedule, the draft minutes of the Statutory Report Commissioner Working Group, the P&WC, the ARAC, the Scotland Committee, and the Wales Committee meetings.